



National College for
Teaching & Leadership

Mr David Lavery: Professional conduct panel outcome

**Panel decision and reasons on behalf of the
Secretary of State for Education**

September 2016

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Professional conduct panel decision and recommendations, and decision on behalf of the Secretary of State

Teacher: Mr David Lavery

Teacher ref number: 0960560

Teacher date of birth: 3 April 1988

NCTL case reference: 14886

Date of determination: 1 September 2016

Former employer: Darwen Aldridge Community Academy, Lancashire

A. Introduction

A professional conduct panel (“the panel”) of the National College for Teaching and Leadership (“the National College”) convened on 1 September 2016 at 53 to 55 Butts Road, Earlsdon Park, Coventry CV1 3BH to consider the case of Mr David Lavery.

The panel members were Cllr Gail Goodman (teacher panellist – in the chair), Mr Colin Parker (teacher panellist) and Ms Karen McArthur (lay panellist).

The legal adviser to the panel was Miss Victoria Callicott of Eversheds LLP.

The presenting officer for the National College was Rachel Morgan of Nabarro LLP.

Mr Lavery was not present and not represented.

The meeting took place in private, save for the announcement of the panel’s decision, which was announced in public and recorded.

B. Allegations

The panel considered the allegations set out in the notice of meeting dated 5 August 2016.

It was alleged that Mr Lavery was guilty of unacceptable professional conduct and/or bringing the profession into disrepute, in that he failed to maintain appropriate professional standards when applying for a role at Darwen Aldridge Community Academy, in that he:

1. Failed to accurately complete his application form:
 - a. he failed to include in the “Teaching Experience” section of the application that he had been a teacher at Manor High School between May 2013 and December 2013;
 - b. he failed to explain in the application form that he was dismissed from that post on grounds of gross misconduct;
 - c. he included in the application form that he was an education officer at the Football Association, which is a post that does not exist;
 - d. he signed the declaration in the application form stating “I certify that the information given by me on this application form is to the best of my knowledge correct and complete” on 27 March 2014, which he knew to be untrue;
2. Submitted the application form to the Darwen Aldridge Community Academy; and
3. His actions at 1 and/or 2 above were done deliberately and/or were dishonest.

In the agreed statement of facts, Mr Lavery admitted the facts of the allegations and that they amounted to unacceptable professional conduct and conduct which may bring the profession into disrepute.

C. Preliminary applications

Whilst there were no preliminary applications, the panel considered at the outset whether the allegations should be considered at a public hearing at which the parties would be entitled to attend, or a private meeting without the parties present. The panel considered the interests of justice and, given that the facts of the allegations have been admitted, that Mr Lavery had requested a meeting and the panel had the benefit of his representations, the panel was of the view that justice would be adequately served by considering this matter at a meeting.

The panel carefully considered the public interest. The panel noted that if the case proceeded in a meeting, there would be a public announcement of the panel’s decision.

The panel also had in mind that if a hearing were convened, there would be a cost to the public purse, which may not be justified if the matter could be determined in a meeting. The panel also had regard to the delay that would be caused by convening a hearing and considered it to be in the public interest to reach a final determination in this matter without further delay. The panel therefore decided to proceed with a meeting, but noted that it could, at any stage of the meeting, reconsider this issue.

D. Summary of evidence

Documents

In advance of the hearing, the panel received a bundle of documents which included:

Section 1: Chronology – page 2

Section 2: Notice of referral, response and notice of meeting – pages 4 to 12B

Section 3: Statement of agreed facts and presenting officer representations – pages 14 to 20

Section 4: NCTL documents – pages 22 to 59

Section 5: Teacher documents – pages 61 to 73

The panel members confirmed that they had read all of the documents in advance of the hearing.

Witnesses

The matter was convened as a meeting and no oral evidence was heard.

E. Decision and reasons

The panel announced its decision and reasons as follows:

The panel has carefully considered the case before it and has reached a decision.

The panel confirms that it has read all the documents provided in the bundle in advance of the hearing.

Mr Lavery qualified as a teacher in 2010. He commenced employment at Darwen Aldridge Community Academy (the “Academy”) in September 2014. In November 2014, it transpired that he had previously worked at Manor High School in Oadby, from where he was dismissed on the grounds of gross misconduct in December 2013. Mr Lavery had not declared this job on his application to the Academy. In addition, his application included a previous job at the Football Association (the “FA”), however, the FA had no

record of Mr Lavery ever being employed by them. Mr Lavery was suspended from his post at the Academy on 19 November 2015 pending an investigation, and on 31 December 2015, he resigned.

Findings of fact

Our findings of fact are as follows:

The panel has found the following particulars of the allegation against you proven, for these reasons:

You are guilty of unacceptable professional conduct and/or bringing the profession into disrepute in that you failed to maintain appropriate professional standards when applying for a role at Darwen Aldridge Community Academy in that you:

1. Failed to accurately complete your application form:

1.a you failed to include in the “Teaching Experience” section of the application that you had been a teacher at Manor High School between May 2013 and December 2013;

The panel notes Mr Lavery’s admission of the facts of this allegation in response to the notice of referral (p.10), in the agreed statement of facts (p.15) and in his letters to the NCTL (p.11-12 and p. 61)

In addition, the panel has had sight of Mr Lavery’s application for the job at the Academy, and it is clear that he did not include in the “Teaching Experience” section of the form that he had previously been a teacher at Manor High School in Oadby from May 2013 (p.46). The principal of the Academy carried out investigations in November 2015, and the panel has seen his contemporaneous records of his telephone call with the headteacher of Manor High School on 19 November 2015. The contemporaneous telephone note records that the headteacher of Manor High School confirmed that Mr Lavery had started working at the school in May 2013 and was dismissed for gross misconduct in December 2013 (p.56). The panel was satisfied that the discussion had taken place given the follow up email between the headteacher and the principal at 15:03 on the same day (p. 57).

The panel is therefore satisfied that Mr Lavery failed to accurately complete his application form, by leaving out this previous employment with Manor High School.

The panel therefore finds this allegation proven.

1.b you failed to explain in the application form that you were dismissed from that post on grounds of gross misconduct;

Again, the panel notes Mr Lavery's admission of the facts of this allegation in response to the notice of referral (p.10), in the agreed statement of facts (p.15) and in his letters to the NCTL (p.11-12 and p.61).

In addition, Mr Lavery's application for the job at the Academy does not refer to his role at Manor High School at all, including the fact that he was dismissed on the grounds of gross misconduct.

The panel has seen evidence to confirm that Mr Lavery was dismissed on the grounds of gross misconduct. The fact of Mr Lavery's dismissal is confirmed in the record of the conversation between the principal of the Academy and the headteacher of Manor High School of 19 November 2015 (p.56). The panel also notes that the principal of Manor High School confirmed in an email dated 18 November 2015 that he considered Mr Lavery's behaviour to have constituted gross misconduct (p.55). The contemporaneous records of the telephone call on 19 November 2015 between the principal of the Academy and a Local Authority Designated Officer ("LADO") also state that Mr Lavery had been dismissed from Manor High School.

The panel is therefore satisfied that Mr Lavery failed to accurately complete his application form, by failing to explain that he was dismissed from his previous employment with Manor High School on the grounds of gross misconduct.

The panel therefore finds this allegation proven.

1.c you included in the application form that you were an education officer at the Football Association, which is a post that does not exist;

As previously, the panel notes Mr Lavery's admission of the facts of this allegation in response to the notice of referral (p.10), in the agreed statement of facts (p.15) and in his letters to the NCTL (p.11-12 and p.61).

In addition, Mr Lavery's application for the job at the Academy does refer to a previous post as "education officer" with the FA in the "Teaching Experience" section of the form (p.46). Indeed, Mr Lavery included in the form a detailed description of his areas of responsibility.

The panel has seen evidence to confirm that the post of education officer at the FA does not exist. The panel noted that the Academy's report to the NCTL (p. 27) refers to the fact that the FA had no record of the coaching qualifications claimed by Mr Lavery. Further, the notice of referral dated 27 May 2016 noted that the determination panel had received email correspondence from the Lancashire Football Association which confirmed they had no record of Mr Lavery ever being employed by the FA (p. 5). The panel noted that such emails did not form part of the current hearing bundle. On the basis of all of the evidence before it, the panel has no reason to disbelieve Mr Lavery's admissions in this respect.

The panel is therefore satisfied that Mr Lavery failed to accurately complete his application form, by including a role which did not exist.

The panel therefore finds this allegation proven.

1.d you signed the declaration in the application form stating “I certify that the information given by me on this application form is to the best of my knowledge correct and complete” on 27 March 2014, which you knew to be untrue;

The panel again notes Mr Lavery’s admission of the facts of this allegation in response to the notice of referral (p.10), in the agreed statement of facts (p.15) and in his letters to the NCTL (p.11-12 and p.61).

In addition, the panel notes that the application form includes the declaration as set out in the allegation (p.52). The panel has already found that the “Teaching Experience” section of the form omitted one previous role and included one other role which did not exist. The panel is therefore satisfied that Mr Lavery must have known that he was agreeing to a declaration which he knew to be untrue.

The panel notes that it is not clear whether the entirety of the declaration section of the form has been reproduced in the bundle, and there does not appear to be an actual hand-written signature by Mr Lavery anywhere on the form (although there is an electronic signature on his application form under the heading “Equal Opportunities” on p. 53). On the basis of all the evidence before it, the panel has no reason to disbelieve Mr Lavery’s admissions in this respect. The panel is content that he must have signed the declaration as part of the application process.

The panel is therefore satisfied that Mr Lavery failed to accurately complete his application form, by signing the declaration which he knew to be untrue.

The panel therefore finds this allegation proven.

2. Submitted the application form to the Darwen Aldridge Community Academy;

The panel notes that the copy of the application form was obtained from the Academy. In addition, the panel notes Mr Lavery’s admission of the facts of this allegation in response to the notice of referral (p.10), in the agreed statement of facts (p.15) and in his letters to the NCTL (p.11-12 and p.61).

The panel also notes that the Academy’s report to the NCTL (p. 25) states that the principal of the Academy “checked DLY’s application form for his current position in the Academy dated 27/2/2014” which date, the panel notes, matches the date of Mr Lavery’s electronic signature (p. 53) under the equal opportunities monitoring section of the form.

The panel is therefore satisfied that he did submit the application form to the Academy and therefore finds this allegation proven.

3. Your actions at 1 and/or 2 above were done deliberately and/or were dishonest.

The panel notes Mr Lavery's admission that his actions were dishonest in response to the notice of referral (p.10), in the agreed statement of facts (p.16) and in his letters to the NCTL (p.11-12 and p.61).

The panel also notes that the Academy's report to the NCTL describes the meeting with Mr Lavery where he was asked to explain why there appeared to be an incorrect record of previous employment in his application for his position at the Academy. Mr Lavery is stated to have responded "by saying that obviously he was concerned about the reasons for him leaving that school and although he was cleared of any wrongdoing by both the DBS and the Teaching Council, he thought it would still go against him in the competitive market of applying for teaching jobs" (p.26).

It is clear to the panel that Mr Lavery consciously and deliberately entered incorrect and incomplete information in his application form. He knew that his history would likely be an obstacle to his securing a new job, and he purposefully wanted to conceal this as his union representative confirms in an email dated 11 May 2016 (p. 63). He knew that the information he was providing was untrue, and the panel is therefore satisfied that his state of mind was dishonest.

The panel received and accepted advice from the legal adviser that there was a further requirement to consider two questions when deciding whether Mr Lavery's actions were dishonest.

The panel was advised that the first limb of the traditional test to which panels are referred is "whether the panel is satisfied on the balance of probabilities that Mr Lavery's actions would be regarded as dishonest according to the standard of a reasonable and honest man".

The panel was informed of a High Court case of May 2015 concerning the appeal against a decision of a Professional Conduct Panel which stated that the tribunal should first determine "whether on the balance of probabilities, a defendant acted dishonestly by the standards of ordinary and honest members of that profession". If so, the panel was advised that it must then go on to determine whether or not it is more likely than not that the defendant realised that what he or she was doing was by those standards dishonest. The panel accepted that only if the answer to both these questions is yes, can the allegation of dishonesty be established in this case. The panel were also informed that the Court of Appeal in an appeal against a criminal conviction in December 2015 held that the required standard under the objective limb was the ordinary standards of reasonable and honest people. However, the panel understands that it has yet to be

seen whether that decision will be applied in the context of professional discipline proceedings, given the shift away from that test by the High Court.

The panel itself considers that Mr Lavery's conduct was dishonest according to the ordinary standards of a reasonable and honest person and teacher and that Mr Lavery must have known that what he was doing was dishonest.

The panel therefore finds this allegation proven.

Findings as to unacceptable professional conduct and/or conduct that may bring the profession into disrepute

Having found all of the allegations to have been proven, including dishonesty, the panel has gone on to consider whether the facts of those proven allegations amount to unacceptable professional conduct and/or conduct that may bring the profession into disrepute. In doing so, the panel has had regard to the document Teacher Misconduct: The Prohibition of Teachers, which the panel refers to as "the Advice".

The panel notes that unacceptable professional conduct is defined as misconduct of a serious nature, falling significantly short of the standard of behaviour expected of a teacher. In making a judgement as to whether the behaviour demonstrated falls significantly short of the standard expected of a teacher, the panel has drawn on its own knowledge and experience of the teaching profession as well as the Teachers' Standards. In particular, the panel has found the following standard relevant in Mr Lavery's case:

- Teachers uphold public trust in the profession and maintain high standards of ethics and behaviour, within and outside school
- Having regard for the need to safeguard pupils' well-being, in accordance with statutory provisions
- Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach
- Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

The panel is satisfied that Mr Lavery's conduct fell significantly short of the standards expected of the profession, which include acting with honesty and integrity.

The panel has also considered whether Mr Lavery's conduct displayed behaviours associated with any of the offences listed on pages 8 and 9 of the Advice, which would be an indicator of unacceptable professional conduct. In the panel's view, the relevant item from this list is that of "fraud or serious dishonesty". The panel considers Mr Lavery's actions amounted to "serious dishonesty" within the meaning of the Advice. Mr Lavery's dishonesty had been sustained over a long period of time and the panel had already found that such dishonesty was deliberate. Further, it was only when the dishonesty was

established, that Mr Lavery admitted to his dishonesty. Finally, Mr Lavery had knowingly denied the Academy the opportunity to ensure that children were safeguarded by investigating the reasons surrounding his dismissal. The panel therefore considers that Mr Lavery's actions amounted to serious dishonesty.

Therefore, the panel considers that Mr Lavery's conduct fell significantly short of the standards expected of teachers. Whilst the panel notes his desire to put his dismissal behind him and move on with his career, he should not have resorted to dishonesty to achieve this. Teachers are expected to uphold public trust and maintain high standards of ethics, which Mr Lavery has clearly failed to do.

Accordingly, the panel is satisfied that Mr Lavery is guilty of unacceptable professional conduct.

Turning to the issue of conduct that may bring the profession into disrepute, the panel has taken into account how the teaching profession is viewed by others and considered the influence that teachers may have on pupils, parents and others in the community. The panel has taken account of the uniquely influential role that teachers can hold in pupils' lives and that pupils must be able to view teachers as role models in the way they behave.

In the circumstances, the panel is of the view that Mr Lavery's conduct, in deliberately lying on a job application (which Mr Lavery admits (p.61)), amounts to conduct which would likely have a negative impact on his status as a teacher, potentially damaging the public perception.

The panel therefore finds that Mr Lavery's actions also constitute conduct that may bring the profession into disrepute.

Panel's recommendation to the Secretary of State

Given the panel's findings in respect of unacceptable professional conduct and conduct that may bring the profession into disrepute, the panel has gone on to consider whether to recommend the imposition of a prohibition order by the Secretary of State.

In considering this, the panel has borne in mind whether this would be an appropriate and proportionate measure, and whether it would be in the public interest to do so. The panel is mindful that prohibition orders should not be given in order to be punitive, or to show that blame has been apportioned, although they are likely to have a punitive effect.

The panel has considered the particular public interest considerations set out on page 9 of the Advice and so has found a number of them to be relevant in this case. In particular:

- the protection of pupils and other members of the public – as the panel has found previously, the panel considers that Mr Lavery knowingly denied the Academy the

opportunity to safeguard children by investigating the reasons for Mr Lavery's dismissal.

- the maintenance of public confidence in the profession - the panel considers that public confidence in the profession could be seriously weakened if conduct such as that found against Mr Lavery were not treated with the utmost seriousness when regulating the conduct of the profession.
- declaring and upholding proper standards of conduct - the panel considered that there is a strong public interest consideration in declaring proper standards of conduct in the profession, as the conduct found against Mr Lavery is outside that which could reasonably be tolerated.

Notwithstanding the clear public interest considerations that are present, the panel has considered carefully whether or not it would be proportionate to impose a prohibition order taking into account the effect that this would have on Mr Lavery.

In carrying out the balancing exercise, the panel has considered the public interest considerations both in favour of and against prohibition as well as the interests of Mr Lavery. The panel has taken further account of the Advice, which suggests that a prohibition order may be appropriate if certain behaviours of a teacher have been proven. These behaviours include serious departure from the personal and professional conduct elements of the Teachers' Standards, and dishonesty.

Even though there were behaviours that would point to a prohibition order being appropriate, the panel has gone on to consider whether or not there are sufficient mitigating factors to militate against a prohibition order being an appropriate and proportionate measure to impose, particularly taking into account the nature and severity of the behaviour in this case.

In particular, the panel notes that Mr Lavery has a number of supportive references from his work within his voluntary football coaching but the panel finds these references unconvincing and not relevant. In this regard, the panel also notes that the references do not speak to Mr Lavery's honesty and integrity and are, in the majority, given by younger people rather than his peers from the education setting. The panel therefore does not consider it has any persuasive evidence that Mr Lavery has a good history which is relevant to the allegations.

The panel has also taken into account that Mr Lavery was suffering from anxiety and stress and/or depression at the time of his conduct, but notes that no medical evidence has been submitted to support this. However, the panel has seen no evidence that he was acting under duress, and the panel considers that his actions were deliberate and for his own gain.

In the circumstances, the panel is of the view that prohibition is both proportionate and appropriate. The panel has decided that the public interest considerations outweigh the interests of Mr Lavery. The panel had already found the actions of Mr Lavery amounted to “serious dishonesty”. The dishonesty was deliberate and sustained over a lengthy period of time. The panel considered this to be particularly persuasive in reaching its recommendation. Accordingly, the panel makes a recommendation to the Secretary of State that a prohibition order should be imposed with immediate effect.

The panel has gone on to consider whether or not it would be appropriate to recommend that a review period of the order should be considered. The panel is mindful that the Advice states that a prohibition order applies for life, but there may be circumstances in any given case that may make it appropriate to allow a teacher to apply to have the prohibition order reviewed after a specified period of time that may not be less than 2 years.

The panel notes that Mr Lavery has expressed deep regret for his actions, and has removed himself from the profession, but has not displayed insight into the seriousness of his actions. Mr Lavery does not appear to accept responsibility for his actions.

The Advice provides that a lifetime prohibition is imposed with no opportunity for review is the usual recommendation in cases which involve fraud or serious dishonesty. The panel has found that Mr Lavery case involves serious dishonesty and that no credible or relevant mitigating evidence has been offered by Mr Lavery. The panel therefore considers that these findings indicate a situation in which a review period would not be appropriate and as such has decided that it would be proportionate in all the circumstances for the prohibition order to be recommended without provision for a review period.

Decision and reasons on behalf of the Secretary of State

I have carefully considered the findings and recommendations of the panel in this case, both in terms of sanction and review. The panel has found all of the allegations proven, including dishonesty, and Mr Lavery has been found guilty of unprofessional conduct and conduct bringing the profession into disrepute.

The panel is of the view that that the offences of fraud or serious dishonesty are relevant to Mr Lavery’s case. I agree with that view.

I have considered the public interest in this case. I note the panel has considered the particular public interest considerations, and have found a number of them to be relevant, namely: the protection of pupils; the maintenance of public confidence in the profession and declaring and upholding proper standards of conduct.

I note the panel does not consider that it has any persuasive evidence that Mr Lavery has a good history which is relevant to the allegations.

I note the panel has taken into account that Mr Lavery was suffering from anxiety and/or depression at the time of his conduct, but that no medical evidence was provided in support. I also note the panel has seen no evidence that Mr Lavery was acting under duress, and considers that his actions were deliberate and for his own gain.

The panel is of the view that prohibition is both proportionate and appropriate. The panel has decided that the public interest considerations outweigh the interests of Mr Lavery. I agree with that view. I agree with the panel that prohibition is both proportionate and appropriate. The panel has found serious dishonesty, and that the dishonesty was deliberate and sustained over a lengthy period of time. Mr Lavery knowingly denied the Academy the opportunity to safeguard children.

I now turn to the matter of a review period.

The panel has considered the Advice which provides that a lifetime prohibition is imposed with no opportunity for review where cases involve fraud or serious dishonesty.

The panel has decided that it would be proportionate in all the circumstance for the prohibition order to be recommended without provision for a review period. I agree with the panel's view. The panel has found that this case involves serious dishonesty and that no credible or relevant mitigating evidence has been offered by Mr Lavery. The panel noted that Mr Lavery expressed deep regret for his actions, but has not displayed insight or accepted responsibility for his actions.

I agree with the panel that a prohibition order should be imposed and that no review period should be allowed.

This means that Mr David Lavery is prohibited from teaching indefinitely and cannot teach in any school, sixth form college, relevant youth accommodation or children's home in England. Furthermore, in view of the seriousness of the allegations found proved against him, I have decided that Mr Lavery shall not be entitled to apply for restoration of his eligibility to teach.

This order takes effect from the date on which it is served on the teacher.

Mr Lavery has a right of appeal to the Queen's Bench Division of the High Court within 28 days from the date he is given notice of this order.

A handwritten signature in black ink, appearing to read 'J. Millions', written over a light blue grid background.

Decision maker: Jayne Millions

Date: 7 September 2016

This decision is taken by the decision maker named above on behalf of the Secretary of State.